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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,247

02/10/2005

Howard P. Klein

81,610

4625

29089

7590

09/14/2007

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EXAMINER

MOORE, MARGARET G

ART UNIT

PAPER NUMBER

1712

MAIL DATE

DELIVERY MODE

09/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,247

Applicant(s)

KLEIN ET AL.

Examiner

Margaret G. Moore

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1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 to 5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 to 5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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1. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what is embraced by the phrase "Mannich-base type hardener" since the breath of "type" is unknown.

Claims 4 and 5 contain the trademark/trade name JEFFAMINE D-430, JEFFAMINE D-400 and JEFFAMINE T-403. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a polyamine and, accordingly, the identification/description is indefinite.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1, 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sellstrom et al. in view of Yeakey.

Sellstrom et al. teach an epoxy resin composition containing a combination of amine hardeners as found on the bottom of column 1. In the general formula on the bottom of column 1, "x" is preferably 2 or 3. The only difference between this diamine and that in claim 1 is that the diamine in Sellstrom et al. contains a methyl groups on the carbon atom attached to the amine rather than an ethyl group.

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Yeakey is the generic reference that teaches such polyamines as curing agents for epoxy resins. The formula on column 1, lines 15 to 20, is generic to the specific diamine found in Sellstrom et al. This reference teaches that the Z group, which corresponds to the methyl group in Sellstrom et al., can be hydrogen, methyl or ethyl.

It is prima facie obvious to substitute equivalents, motivated by the reasonable expectation that the respective species will behave in a comparable manner or give comparable results in comparable circumstances. In re Ruff 118 USPQ 343; In re Jezel 158 USPQ 99; the express suggestion to substitute one equivalent for another need not be present to render the substitution obvious. In re Font, 213 USPQ 532. In the instant application, it would have been obvious to use an ethyl substituent group rather than a methyl group with a reasonable expectation of obtaining comparable results. While the skilled artisan would have expected a longer cure time associated with the diamine having ethyl groups, since the reactive NH_2 will be more sterically hindered, it is reasonable to expect that both types of diamines will function as epoxy curatives in a comparable or at least expected manner. In this manner claims 1 and 2 are rendered obvious. For claim 4, note that Sellstrom et al. includes xylenediamine as well.

4. Claims 1, 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waddill et al.

Waddill et al. teach polyether urea curing agents which are the reaction product of a polyoxyalkylene polyamine with a bifunctional isocyanate. See for instance the abstract. As can be seen from the bottom of column 4, the most preferred curing agent is formed from the reaction of a polyoxypropylenepolyamine having a molecular weight of about 200 to 400. With this in mind see the general formula on column 5 for the polyoxypropylenepolyamine, particularly the most preferred example. In this preferred polyoxypropylene, when "n" is 1 the molecular weight is just under 200. Obviously polyoxypropylenepolyamines having "n" as 1 are clearly among the preferred embodiments. The only difference between this preferred polyamine and that claimed is that, in the preferred polyamine, X is methyl while the corresponding X group in the claimed polyamine is ethyl. As can be seen from the general formula on column 5, however, X can

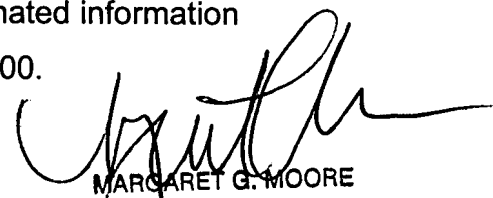
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be methyl or ethyl in the alternative. Since it is prima facie obvious to replace one equivalent with another, as noted above, the skilled artisan would have found the difference between the preferred polyoxypropylenepolyamines and that claimed to have been obvious. Again, the skilled artisan would have expected that the cure rate would be slower when X is ethyl or methyl since the reactive amine group will be more sterically hindered. The top of column 6 teaches a diisocyanate reactant. For claim 5, it would have been obvious to use the polyoxypropyleneamines having an X ethyl group in combination with polyoxypropyleneamines having an X methyl group since it would have been obvious to combine comparable curing agents in an effort to optimize and/or modify the cure rate. Note too that two compositions, each of which is taught by prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose has been held to be prima facie obvious.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday and Wednesday to Friday, 10am to 4pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mgm
9/12/07


MARGARET G. MOORE
PRIMARY PATENT EXAMINER
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